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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-201294 (JAB)

July 16, 1981

Mr. John M. Paolino  
Vice President, Great Lakes Region  
Professional Air Traffic Controllers  
Organization  
Suite 102/125 South Wilke Road  
Arlington Heights, Illinois 60005

Dear Mr. Paolino:

This is in response to your request for our interpretation concerning entitlement to premium pay in three fact situations.

The first situation you present is where an employee commences two shifts on a Sunday, both regularly assigned as part of the normal shift rotation. He works a 0700 to 1500 shift on Sunday and then returns to work at 2345 for fifteen minutes of scheduled overtime prior to working the 0000 to 0800 shift on Monday. You have asked whether such an employee is entitled to Sunday premium pay.

Entitlement to Sunday premium pay is based on 5 U.S.C. § 5546(a) (1976), which provides:

"An employee who performs work during a regularly scheduled 8 hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his basic pay."

According to 5 U.S.C. § 5542(a) "hours of work officially ordered or approved in excess of 40 hours in an administrative work-week, or \* \* \* in excess of 8 hours in a day, performed by an employee are overtime work..." Since 15 minutes of work performed

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between 2345 and 2400 on Sunday is in excess of 8 hours, it is overtime work under 5 U.S.C. § 5542(a) so that an employee on a schedule as you describe would not be eligible for Sunday premium pay for the 0000-0800 shift on Monday. Such an employee would, of course, be entitled to Sunday premium pay for the 0700 to 1500 shift performed on Sunday.

You have asked how the above situation differs from one where an employee works a 0700 to 1500 shift on Sunday and then returns to work at 2300 and continues to work until 0700 on Monday. In regard to an employee's entitlement to Sunday premium pay, we do not believe there is any difference between the two situations. The hour of work performed between 2300 and 2400 on Sunday is overtime work under 5 U.S.C. § 5542(a) and an employee would thus be precluded from receiving Sunday premium pay for the remainder of that shift.

The third situation you have presented involves an employee who works 0700-1500 on a normal workday and then returns to work at 2300 begin another shift which ends at 0700 the following day. You ask whether such an employee would be entitled to overtime compensation for the hour between 2300 and 2400.

We have held that an agency may treat any 24-hour period as a day, but that it should, when administratively feasible, adopt the midnight to midnight day. Thus, so long as the hour from 2300 to 2400 is the ninth hour in a day, as established by the agency, an employee in the above situation would be entitled to overtime compensation for that hour under 5 U.S.C. § 5542(a).

We hope that the foregoing will be of assistance to you.

Sincerely yours,

BSI

Robert L. Higgins  
Assistant General Counsel